



COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

November 17, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

28 November 17, 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**DISPUTES REVIEW BOARD SPECIFICATION AND AGREEMENT
BIG TUJUNGA DAM SEISMIC REHABILITATION AND SPILLWAY MODIFICATION
PROJECT ID NO. WRDD000005
(SUPERVISORIAL DISTRICT 5)
(3 VOTES)**

SUBJECT

These actions are to modify the contract with Shimmick Construction Company, Inc., for Project ID No. WRDD000005, Big Tujunga Dam Seismic Rehabilitation and Spillway Modification, to incorporate a Disputes Review Board Specification and Disputes Review Board Three Party Agreement, and authorize its execution.

IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:

1. Approve the proposed modification to the public works contract to incorporate a Disputes Review Board Specification and Disputes Review Board Three Party Agreement under the contract provisions for Resolution of Construction Claims for Project ID No. WRDD000005, Big Tujunga Dam Seismic Rehabilitation and Spillway Modification.
2. Authorize the Director of Public Works or her designee to execute the Disputes Review Board Three Party Agreement, in the form previously approved by County Counsel, for establishing a Disputes Review Board at an additional cost to be financed by Board-approved appropriations for the project. The Los Angeles County Flood Control District's share of the cost is not to exceed the Director of Public Works' delegated authority of \$150,000.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to obtain the County of Los Angeles Board of Supervisors' (Board), acting as the governing body of the Los Angeles County Flood Control District, approval for a modification to the contract and authorize execution of a Disputes Review Board (DRB) agreement to minimize the potential for claims and litigation. The proposed contract modification and agreement are enclosed.

On June 26, 2007, Agenda Item 48, your Board awarded a public works contract to Shimmick Construction Company, Inc. (Shimmick), in the amount of \$88,533,680. Since issuing a notice to proceed to Shimmick, disputes have arisen, which both parties have been unable to resolve. After discussion with Shimmick, we mutually agreed that a DRB would be beneficial in resolving disputes and minimizing the potential for litigation.

The recommended actions will provide for the creation of a three-member DRB to assist in resolving disputes, potential claims, and other controversies arising out of the work for this complex and technically challenging project. The procedures for the DRB, including the selection criteria of the members, will be incorporated into the existing contract under the provisions for Resolution of Construction Claims. The proposed procedures were developed with the assistance of County Counsel and will supplement but not replace existing provisions, and disputes will be resolved in accordance with the contractual provisions required by law.

A DRB will provide for an impartial and independent review of disputes by individuals knowledgeable with public works construction methods, interpretation of construction contract documents, and resolution of construction disputes. A recommendation made by the DRB will not be binding on either party but is expected to provide guidance in determining an appropriate course of action for resolving the dispute. Due to several unresolved disputes currently outstanding and anticipated disputes which may arise during the remainder of the contract term, a DRB would be in the best interest of the project.

Costs associated with the DRB shall be shared equally by the Los Angeles Flood Control District (District) and Shimmick. Approval of the recommended actions will facilitate the resolution of claims and minimize the potential for litigation.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1) and Community and Municipal Services (Goal 3). The recommended actions to incorporate DRB Specification and DRB Three Party Agreement into the public works contract will improve administrative contracting processes and minimize the potential for costly litigation.

FISCAL IMPACT/FINANCING

Implementation of the recommended actions will have no impact to the County General Fund.

The original contract amount is \$88,533,680 (\$87,183,680 for contract work and \$1,350,000 as a change order contingency to pay for compensable time extensions). Changes in work approved by the Director of Public Works (Director) or her designee under delegated authority authorized by your Board are \$217,050.06. Changes in work previously approved by your Board are \$4,994,415.11. The District's share of the cost for DRB services is estimated to be \$75,000. The revised contract amount for the work is estimated to be \$92,395,145.17. The current percent change to the original contract amount for the work is 6 percent.

Should it become necessary to increase the District's estimated share of the cost for DRB services beyond the Director's delegated authority of \$150,000, we will return to your Board for approval of the increase.

Sufficient funds are available in the Board-approved appropriations for the project to cover the costs of the requested services.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The DRB specification and DRB Three Party Agreement were approved as to form and content by County Counsel. The agreement includes a clause for termination of services upon prior written notice as directed by your Board.

ENVIRONMENTAL DOCUMENTATION

Implementation of the recommended actions as described above and in the enclosures does not change any conditions which resulted in the original environmental findings.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval by your Board of the requested contract modification and authorization to execute the DRB agreement will minimize the potential for litigation from disputes arising out of the work of this project.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Construction Division.

The Honorable Board of Supervisors

11/17/2009

Page 4

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER

Director

HH:ts

Enclosures

c: Chief Executive Office (Lari Sheehan)
County Counsel
Executive Office
Office of Affirmative Action Compliance

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

Contract No. WRDD000005, Modification No. 0038
Attachment No. 1

DISPUTES REVIEW BOARD SPECIFICATION

CONTRACT WRDD000005

1. Introduction

A Disputes Review Board (DRB) will be established to assist in the resolution of disputes, claims, and other controversies (Dispute) arising out of the work of this Contract.

This Specification describes the purpose, procedure, function, and key features of the DRB. Attached to this Specification is an exemplar Three Party Agreement, reflecting the terms and conditions governing the DRB.

The purpose of the DRB is to facilitate the timely and equitable resolution of disputes concerning the Contract as between the Los Angeles County Flood Control District (District) and the Contractor in an effort to avoid delay and litigation.

The DRB shall fairly and impartially consider disputes referred to it and provide written recommendations to the District and the Contractor to assist in the resolution of these disputes.

2. Continuance of Work During Dispute

At all times during the course of the dispute resolution process, the Contractor shall continue with the work under the Contract as directed, in a diligent manner and without delay, or, if applicable, shall conform to the District's decision or order, and shall be governed by all applicable provisions of the Contract. Records of the work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in the Contract, if this should become necessary. Continuance of work during a Dispute is under reservation of rights and without prejudice to the position of any party as to the issues that are the subject of the Dispute and have not been resolved.

3. Membership

The DRB will consist of one member selected by the District, one member selected by the Contractor, and a third member selected by the first two members. All three members must be approved by both the District and the Contractor. The District and the Contractor should use their best efforts to provide their respective approval within 10 working days of the date the District and Contractor each provide to the other information regarding their nominee. Silence will not be deemed as acceptance. The third member shall be selected as quickly as possible after the first two members are notified to proceed with the third member's selection. The first two members shall ensure that the third member they have selected meets all of the criteria listed below. In the event of an impasse in selection of the third member, that member shall be selected by a mutual agreement of the District and the Contractor. In so doing, they may, but are not required to, consider the nominees offered by the first two members.

**LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION**

CHANGE ORDER NO. 038

All DRB members shall be experienced with public works construction projects, the type of construction involved in the Dispute, the interpretation of construction contract documents, and resolution of construction disputes. Minimum technical qualifications require at least 15 years experience in engineering and construction on major transportation or public works projects.

The goal in selecting the third member is to complement the construction experience of the first two and to provide leadership for the DRB's activities.

The third member will act as a Chairman for all DRB activities.

It is imperative that DRB members maintain impartiality and avoid conflicts of interest with either the Contractor or the District.

The criteria and limitations for membership are:

- a. No member shall have an ownership interest in any party, including subcontractors, consultants, or affiliates, to the Contract or a financial interest in the Contract or Contractor, except for payment for services pursuant to the attached Disputes Review Board Three Party Agreement.
- b. Except for fee-based consulting services on previous projects, no member shall have ever been previously employed by or have had financial ties to any party, including subcontractors, consultants, or affiliates, to the Contract. Previous employment as a consultant by any party directly or indirectly involved must be disclosed.
- c. No member, within two years of his selection for the DRB, shall have had a close, professional or personal relationship with any key member of any party, including subcontractors, consultants, or affiliates, to the Contract.
- d. No member shall have had substantial prior involvement in the Contract, of a nature which could compromise his ability to impartially participate in the DRB's activities.
- e. During their tenure as a DRB member, no member shall be employed by any party, including subcontractors, consultants, or affiliates, to the Contract.
- f. During their tenure as a DRB member, no member shall engage in a discussion or make an agreement, with any party, including subcontractor, consultants, or affiliates, to the Contract regarding employment after the Contract is completed.

The District, the Contractor, and all three members of the DRB should exercise their best efforts to execute the attached Dispute Review Board Three Party Agreement within two weeks after the selection of the third member.

Before entering into the Disputes Review Board Three Party Agreement, the prospective DRB members shall submit complete disclosure statements for review by both the District and the Contractor. Each statement shall include a resume of experience, together with a declaration under penalty of perjury, describing all past, present, and anticipated or planned future relationships to this Contract and with all parties, including subcontractors, consultants and affiliates, involved in the Contract. Disclosure of recent, close, professional, or personal relationships with all key members of all parties including subcontractors, consultants, or affiliates to the Contract shall be included.

4. Operation

The DRB shall formulate its own rules of operation. It is not desirable to adopt hard and fast rules for the functioning of the DRB. The entire procedure shall be kept flexible to adapt to changing situations. The DRB shall initiate, with the District's and Contractor's concurrence, new rules or modifications to old ones whenever this is deemed appropriate.

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

The DRB shall visit the project and meet with representatives of the District and Contractor at intervals and at times as mutually agreed. The frequency of these visits shall be as agreed among the District, the Contractor, and the DRB depending on the progress of the work. Except for providing services required in the Dispute Resolution Board Three Party Agreement, the DRB and its individual members shall refrain from giving any advise to either the District or Contractor concerning performance of the Contract, the specific work under the Contract, and the resolution of problems and Disputes at issue therein. Similarly, District and Contractor, except for their participating in the DRB's activities as provided in the Contract and in the Dispute Resolution Board Three Party Agreement, shall not solicit advice or consultation from the DRB or its members in matters dealing with performance of the Contract, the specific work under the Contract, or the resolution of problems and Disputes at issues therein.

5. Procedure to Initiate Dispute Resolution

For claims or Disputes of less than \$375,000, prior to submission of a Dispute to the DRB, District and Contractor shall comply with the dispute resolution requirements set forth in California Public Contract Code ("PCC") Section 20104.2, and the Additions and Amendments to the Standard Specifications for Public Works Construction, 2006 Edition (Graybook), Subsection 9-4. . Specifically, the Contractor must first submit a written claim with the District, and the District must respond to that claim in writing pursuant to PCC, Section 20104.2(a) through (d), and corresponding paragraphs of Subsection 9-4 of the Graybook. After completion of that process, in lieu of filing a claim pursuant to California Government Code, Section 900, et seq., as provided in PCC, Section 20104.2 (e), and Subsection 9-4 of the Graybook, the District and Contractor may mutually agree to submit a claim or Dispute to the DRB.

Claims or Disputes of \$375,000 or more shall not be subject to the requirements of PCC Section 20104.2 or Graybook Subsection 9-4. Such claims or Disputes may be submitted to the DRB resolution hereunder upon mutual agreement of the parties.

With respect to all claims or Disputes, irrespective of the amount, the parties agree that the running of the period of time within which a claim, pursuant to Government Code, Section 900, et seq., must be filed shall be tolled until substantial completion of the Project, or until either party gives 30 days notice that it elects to either terminate this tolling provision or terminate this Specification and Disputes Review Board Three Party Agreement. Contractor understands and agrees that the tolling of the statute of limitation for purposes of filing a claim, pursuant to Government Code, Section 900, et seq., does not constitute a waiver by the District of any other provision of the Contract Documents, including, but not limited to the notice requirements of Contractor set forth in Sections 2-5.1, 2-11, or 3-4 of the Standard Specifications for Public Works Construction, 2006 Edition (Greenbook).

District and Contractor mutually agree that no claim or Dispute shall be submitted to the DRB unless mutually agreed by both District and Contractor.

With respect to Claims of \$375,000 or less, steps may be omitted as agreed to by both parties in writing, and the time periods may be modified in order to hasten resolution of Disputes. District and Contractor may mutually agree that the requirements set forth in PCC, Section 20104.2 (a) through (d), and the corresponding paragraphs of the Graybook have been satisfied, in whole or in part, pursuant to correspondence and negotiations between the parties prior to selection and appointment of the DRB, and the Contractor may submit a claim directly to the DRB with District's concurrence.

6. Scheduling of Hearing Before DRB and Position Papers

The hearing date will be set by mutual agreement between the Contractor, District and DRB, depending on the complexity of the issues.

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

The Petitioner (hereinafter Initiating Party), shall submit a statement describing the dispute, Initiating Party position on the dispute, and the contractual justification for that position including reference material, exhibits, calculations, and other pertinent material to each DRB member and the other party (hereinafter Responding Party) 30 days prior to the scheduled hearing. All arguments that the party intends to put forth during the hearing must be included so that the other party has the opportunity to provide a considered response at the hearing.

The Responding Party shall submit a statement describing the dispute, its position on the dispute, if it differs from Initiating Party's statement, and the contractual justification for that position, including any material and documents supporting its response to the allegations of the Initiating Party 15 days prior to the scheduled hearing date, to each DRB member and the Initiating Party.

Approximately one week prior to the hearing date, the parties shall exchange and submit to each DRB member a list of the witnesses and representatives each party intends to have present at the hearing. The list should contain the following information: the person's name, title, professional affiliation, and if the person will make a presentation or be a fact witness, and a very brief summary of the matters that the person will address.

If any of these dates fall on a weekend, a holiday, or a nonbusiness day for either of the parties, the due date shall be the business day immediately following. The parties shall agree upon the manner of service of the documents. The DRB may modify the time periods set forth above, and may grant extensions to the parties as necessary.

7. Conduct at Hearing

a. All statements or admissions made by the parties for the purpose of, in the course of, or pursuant to resolving disputes by the Dispute Resolution Board, this Specification and attached DRB Three Party Agreement; and all documents, evidence, and materials prepared for the purpose of, in the course of, or pursuant to such purposes are confidential and strictly inadmissible as evidence pursuant to California Evidence Codes, §§ 1119 and 1152 and shall not be used or introduced in any other proceeding except upon the written consent of the party who made such statements or produced such materials.

b. Normally the hearing will be conducted at the jobsite. However, hearings may be conducted by mutual consent of the parties at District's Headquarters or at any location that would be more convenient and still provide all required facilities and access to necessary documentation. Private sessions of the DRB may be held at any convenient location.

c. Except as otherwise provided therein, the third member of the DRB will act as Chairman of the hearing, or he may appoint one of the other members. Normally each member keeps his or her own notes. A formal transcript shall not be prepared.

d. During the hearing, the Contractor and the District shall each have ample opportunity to be heard and to offer evidence. The District and the Contractor shall have representatives at all hearings. The Initiating Party will first discuss the Dispute followed by the Responding Party. Each party will then be allowed successive rebuttals until all aspects are fully covered. The DRB members may ask questions, request clarification, or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all the evidence presented by both parties. Both the District and the Contractor shall be provided full and adequate opportunity to present all of their evidence, documentation, and testimony regarding all issues properly before the DRB. All evidence presented by either party will be presented by only those directly involved.

e. During the hearings, DRB members shall avoid expressing opinions concerning the merit of the dispute.

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

8. Recommendations of the DRB

The recommendation of the DRB shall be based on the pertinent contract provisions, applicable laws and regulations, and the facts and circumstances involved in the dispute.

After the hearings are concluded, the DRB shall meet to formulate its recommendation. All deliberations by the DRB members shall be conducted in private with all individual views kept strictly confidential. The DRB's recommendations, together with an explanation of its reasoning, shall be submitted as a written report to both parties within two weeks of completion of the hearings.

The DRB shall make every effort to reach a unanimous recommendation. If this proves impossible, the dissenting member may prepare a minority report. Either party may request clarification of a report within 10 days following the receipt of the report. Requests for clarification shall be submitted, in writing, simultaneously to the DRB and the other party. Only one request for clarification per dispute from each party will be allowed. The DRB shall meet with the District and the Contractor to provide additional clarification of its recommendation.

Either party may request reconsideration of a report within 10 days following the receipt of the report, when new information is obtained or developed that was not known at the time of the hearing, or when in the party's opinion, the DRB misunderstood or failed to consider pertinent facts of the dispute. Within a reasonable period of time, the DRB shall provide written reconsideration to both parties. Requests for reconsideration shall be submitted in writing simultaneously to the DRB and the other party. The DRB will not entertain requests for reconsideration that amount to a renewal of prior argument or additional argument based on facts available at the time of the hearing. Only one request for reconsideration per dispute from each party will be allowed.

If the parties mutually agree to accept any or all portions of the DRB's recommendations, the parties may enter into a separate written agreement reflecting same, subject to approval by the Los Angeles County Board of Supervisors (BOS) and/or other District representatives as applicable. In the event the DRB's report includes only a finding or determination in regards to a particular dispute, which necessitates execution of a change order by the parties, if the District and the Contractor both accept DRB's recommendation, the District and the Contractor shall exercise their best efforts to enter into such change order consistent with DRB's recommendation subject to approval by the BOS and/or other District representatives as applicable.

Although the District and the Contractor may place substantial weight on the DRB's recommendations in ultimately evaluating their respective positions concerning the dispute in question, the parties mutually agree and understand that the recommendations are not binding and that they are of no force or effect unless mutually accepted by the District and the Contractor and set forth in a properly executed change order or other contract document, as provided above. The parties further mutually agree and understand that the recommendations, including minority reports, are confidential and are strictly inadmissible as evidence in any subsequent dispute resolution or legal proceeding, pursuant to California Evidence Codes, §§ 1119 and 1152.

9. Compensation

Fees and expenses of all three members of the DRB shall be shared equally (i.e., 50 percent each) by the District and the Contractor. Payment shall constitute full compensation for work performed and services rendered and for all materials, supplies, and incidentals necessary to serve on the DRB.

The hourly fee for any individual member will not exceed \$200 per hour, plus reasonable expenses. The District and Contractor must approve, in writing, the hourly fee of each DRB member prior to that member's selection to the DRB. The District and the Contractor must also approve, in writing, any changes in the DRB members' hourly fee.

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

The Contractor will employ the services of a commercial secretarial service to prepare and mail minutes and progress reports for comment, revisions, and/or approval by the Contractor and the District. The commercial secretarial services will provide administrative services and secretarial services for the DRB. The costs of secretarial and administrative services related to the DRB shall be shared equally by the District and the Contractor. If the DRB desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

The DRB Chairperson, on behalf of the DRB members, shall submit invoices for payment for work completed to both the District and the Contractor, not more often than once per month during the progress of DRB's work under the attached Dispute Resolution Board Three Party Agreement. Such invoices shall be in a format approved by the District and the Contractor and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by each DRB member together with direct, nonsalary expenses. Each invoice shall clearly indicate the respective portions owing and payable by the District and the Contractor. Fees and expenses of all three members of the DRB shall be shared equally by and between the District and the Contractor. Satisfactorily submitted invoices shall be paid within 30 days by the District and the Contractor, individually.

The DRB members shall keep the cost records and accounts pertaining to the attached Dispute Resolution Board Three Party Agreement available for inspection by representatives of the District or the Contractor for a period of three years after final payment.

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

CONTRACT No. WRDD000005

**DISPUTES REVIEW BOARD
THREE PARTY AGREEMENT**

THIS THREE PARTY AGREEMENT (hereinafter, Agreement), is entered on _____, 2009 by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (hereinafter District) _____ (hereinafter Contractor); and _____, the three members of the DISPUTES REVIEW BOARD (hereinafter DRB). All the foregoing parties together are collectively referred to as "Parties."

1. RECITALS

WHEREAS, the District and the Contractor are parties to a contract (hereinafter Contract) for the construction of the Big Tujunga Dam Seismic Rehabilitation and Spillway Modification, Project WRDD000005 (hereinafter Project).

Whereas, under Amendment No. __, the District and the Contractor amended the Contract to add in Article __, entitled Dispute Review Board Specification (hereinafter DRB Specification), which establishes a detailed procedure to assist the District and the Contractor in the resolution of claims, disputes, and other controversies (Disputes) relating to the Contract. The DRB Specification is attached hereto and incorporated by reference into this Agreement.

WHEREAS, the DRB Specification contemplates that the District and the Contractor will enter into this Agreement with the DRB, which is a panel composed of three members, one selected by the District, one selected by the Contractor, and the third member selected by the first two members;

NOW THEREFORE, in consideration of the terms, conditions, covenants, and agreements contained herein, the Parties hereto agree as follows:

2. PURPOSE OF DRB

The DRB is intended to serve as a body to fairly and impartially consider the disputes placed before it and to provide written recommendations (hereinafter Recommendations) to both the District and the Contractor for resolution of these disputes in a timely manner. The members of the DRB shall perform the services necessary to participate on this DRB in accordance with this Agreement and the attached DRB Specification.

3. RESPONSIBILITIES OF DRB

The responsibilities of the DRB include, but are not limited to, the following:

a. Construction Site Visits

It is anticipated that the DRB members will visit the project site, as appropriate, to become familiar with the construction activities and work in progress. The frequency, time, and duration of these visits shall be agreed upon, in writing, among the DRB, the District and the Contractor, but shall not exceed (3) months from the date of the request by either Party.

**LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION**

CHANGE ORDER NO. 038

If, for example, the CONTRACTOR alleges differing site conditions, or other site-specific construction problem, it may be advantageous for the DRB to personally view any relevant site conditions to have a better understanding of the Dispute and the specific allegation(s). However, if viewing by the DRB would cause delay to the Contract, photographs and descriptions of these conditions, collected by either or both parties, can suffice.

b. DRB Conduct

As set forth in the DRB Specification, upon receipt by the DRB of a written submission of a Dispute from the District or the Contractor, the DRB shall convene a hearing to review and consider the Dispute. Both the District and the Contractor shall be given notice of the hearing and a full and adequate opportunity to prepare for the hearing and present evidence.

It is expressly understood that all DRB members are to maintain impartiality and independence in the consideration of facts and conditions surrounding any dispute.

Except for providing the services required in the Agreement, the DRB and its individual members shall refrain from discussing, individually or collectively, issues with the District or the Contractor that could possibly be construed as a conflict of interest to the other party or a compromise of the DRB's ability to impartially participate in DRB activities.

The DRB shall not express an individual or collective opinion of merit, in whole or in part, regarding a Dispute before the DRB or any potential or other dispute at any time prior to submission of the Recommendation.

c. DRB Recommendation

The DRB shall comply with the provisions of this Agreement and the attached DRB Specification in its issuance of the Recommendation, which shall be based upon the pertinent Contract provisions and the facts and circumstances involved in the Dispute. Primarily, the DRB will consider matters involving interpretation of the Contract documents, delays, acceleration of the work, scheduling, extra work, differing site conditions, design changes, and the like.

d. Member Replacement

Should the need arise to appoint a replacement DRB member, the replacement member shall be appointed in the same manner as the original member was appointed and in accordance with the attached DRB Specification. The selection of a replacement DRB member shall begin promptly upon notification of the necessity for a replacement and shall be completed within four weeks. This Agreement will be amended to indicate changes in DRB membership.

4. CONTRACTOR RESPONSIBILITIES

The Contractor shall comply with the provisions of this Agreement and the attached DRB Specification. The Contractor shall not solicit advice or consultation from the DRB or its members in matters dealing with performance of the Contract, the specific work under the Contract, or the resolution of problems and Disputes at issues therein.

The Contractor will, in cooperation with the District, coordinate the operations of the DRB.

The Contractor will employ the services of a commercial secretarial service to support the DRB.

5. DISTRICT RESPONSIBILITIES

The District shall comply with the provisions of this Agreement and the attached DRB Specification.

The District shall not solicit advice or consultation from the DRB or its member in matters dealing with performance of the

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

Contract, the specific work under the Contract, or resolution of problems and Disputes at issue therein

The District will, in cooperation with the Contractor, coordinate the operations of the DRB.

The District will provide conference facilities for the hearings at its Headquarters if requested

6. DRB HEARING, POSITION PAPERS AND SUPPORTING DOCUMENTS

The hearing date shall be set by mutual agreement between the Contractor, the District, and DRB, depending on the complexity of the issues. The Contractor and the District shall each submit to the DRB their position papers, supporting material, and documents in accordance with the attached DRB Specification.

In addition to the material and documents set forth above and in the attached DRB Specification, the District shall furnish to the DRB members one copy of the following Contract Documents: the adopted specifications, plans, all addenda to the specifications and plans, and approved changes in work and change orders.

It is expressly understood by the parties that all statements or admissions made by the parties for the purposes of, in the course of, or pursuant to resolving disputes by the DRB, this Agreement and the attached DRB Specification, and that all documents, evidence, and materials prepared for the purpose of, in the course of, or pursuant to such purposes, are confidential and strictly inadmissible as evidence, pursuant to California Evidence Codes, §§ 1119 and 1152, and shall not be used or introduced in any other proceeding, except upon the written consent of the party who made such statements or produced such materials.

7. DRB'S RECOMMENDATION

If the parties mutually agree to accept any or all portions of the DRB's recommendations, the parties may enter into a separate written agreement reflecting same, subject to approval by the Los Angeles County Board of Supervisors (BOS) and/or other District representatives, as applicable. In the event the DRB's report includes only a finding or determination in regards to a particular dispute, which necessitates execution of a change order by the parties, if the District and the Contractor both accept DRB's recommendation, the District and the Contractor shall exercise their best efforts to enter into such change order consistent with DRB's recommendation, subject to approval by the BOS and/or other District representatives as applicable.

Although the District and the Contractor may place substantial weight on the DRB's recommendations in ultimately evaluating their respective positions concerning the dispute in question, the parties mutually agree and understand that the recommendations are not binding and that they are of no force or effect unless mutually accepted by the District and the Contractor and set forth in a properly executed change order or other contract document as provided above. The parties further mutually agree and understand that the recommendations, including minority reports, are confidential and are strictly inadmissible as evidence in any subsequent dispute resolution or legal proceeding pursuant to California Evidence Code, §§ 1119 and 1152.

8. TERM

DRB's activities and services under this Agreement and the attached DRB Specification shall become effective only upon execution of this Agreement by the Contractor, and the three members of the DRB; and upon approval and execution of this Agreement and the attached DRB Specification by the BOS and/or other necessary District representatives.. The DRB shall remain in place and available throughout the duration of the Contract and shall terminate its activities and services under this Agreement upon written notification by the District and the Contractor to the DRB or upon Final Acceptance of the Project, whichever occurs first, unless terminated sooner in accordance with the terms and conditions set forth in this Agreement.

Except for choosing a third member by the first two members, the DRB members shall not begin any work under the terms of the Agreement unless and until authorized in writing by the District.

**LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION**

CHANGE ORDER NO. 038

9. COMPENSATION

Fees and expenses of all three members of the DRB shall be shared equally (i.e., 50 percent each) by the District and the Contractor. Payment shall constitute full compensation for work performed and services rendered and for all materials, supplies, and incidentals necessary to serve on the DRB.

The hourly fee for any individual member will not exceed \$200 per hour plus reasonable expenses. The District and the Contractor must approve in writing the hourly fee of each DRB member prior to that member's selection to the DRB. The District and the Contractor must also approve in writing any changes in the DRB members' hourly fee.

The Contractor will employ the services of a commercial secretarial service to prepare and mail minutes and progress reports for comment, revisions and/or approval by the Contractor and the District. The commercial secretarial services will provide administrative services and secretarial services for the DRB. The costs of secretarial and administrative services related to the DRB shall be shared equally by the District and the Contractor. If the DRB desires special services such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

On behalf of the DRB members, the DRB Chairperson shall submit invoices for payment for work completed to both the District and the Contractor not more often than once per month during the progress of DRB work under the attached the Dispute Review Board Three Party Agreement. Such invoices shall be in a format approved by the District and the Contractor and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by each DRB member together with direct, nonsalary expenses. Each invoice shall clearly indicate the respective portions owing and payable by the District and the Contractor. Fees and expenses of all three members of the DRB shall be shared equally by and between the District and the Contractor. Satisfactorily submitted invoices shall be paid within 30 days by the District and the Contractor individually.

The DRB members shall keep, available for inspection by representatives of the District or the Contractor for a period of three years after final payment, the cost records and accounts pertaining to the attached Dispute Review Board Three Party Agreement.

10. ASSIGNMENT

The DRB members and the Contractor shall not assign and delegate their rights and responsibilities under this Agreement without the prior consent of the District.

11. TERMINATION OF AGREEMENT

This Agreement may be terminated by either the District or the Contractor at any time and for any reason whatsoever by providing a three-week written notice to the other party and the DRB members.

Each DRB member may withdraw from the DRB by providing a three-week written notice to the other parties. DRB members may be terminated with or without cause by either the District or the Contractor.

12. LEGAL RELATIONS

The Parties hereto mutually understand and agree that each DRB member, in the performance of his duties on the DRB, is acting in the capacity of an independent agent and not as an employee of either the District or the Contractor.

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

13. VENUE, APPLICABLE LAW, AND PERSONAL JURISDICTION

In the event that any Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action shall be initiated in the Superior Court of the State of California, County of Los Angeles. The Parties hereby agree that all questions shall be resolved by application of the California law and that the Parties to such action shall have the right to appeal from such decisions of the Superior Court in accordance with the law of the State of California. The DRB members hereby consent to the personal jurisdiction of the Superior Court of the State of California, County of Los Angeles.

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
CONSTRUCTION DIVISION

CHANGE ORDER NO. 038

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

By: _____ By: _____ By: _____
DRB Member DRB Member DRB Member

CONTRACTOR

DISTRICT

By: _____ By: _____

Title: _____ Title: _____